

Questionnaire concerning the Practical Operation of the 1980 Child Abduction Convention

Wherever responses to this Questionnaire make reference to domestic legislation, rules, guidance or case law relating to the practical operation of the 1980 Convention, **please provide a copy of the referenced documentation** in (a) the original language and, (b) wherever possible, accompanied by a translation into English and / or French.

Name of State or territorial unit: ¹	CANADA Canada's responses are based on input provided by the federal Central Authority (CA) and the CAs for the Canadian provinces and territories. The responses that do not reference one or more provinces or territory apply to Canada as a whole. Input was also provided, where necessary, by Global Affairs Canada and the Family Law and Youth Justice Policy Section of Justice Canada. The Section of Justice Canada responsible for Canadian policy relating to issues covered by the Questionnaire coordinated this work and provided direction, as necessary, on the questions involving broader Canadian policy considerations. The Canadian representatives to the International Hague Network of Judges (IHNJ) also provided their views where they felt it was appropriate to do so.
<i>For follow-up purposes</i> Name of contact person:	Names and contact information for the Canadian CAs are available on the HCCH website.
Name of Authority / Office:	
Telephone number:	
E-mail address:	
Date:	

PART I – PRACTICAL OPERATION OF THE 1980 CONVENTION

Recent developments in your State²

1. Since the 2017 SC, have there been any significant developments in your State regarding the **legislation** or **procedural rules** applicable in cases of international child abduction? Where possible, please state the reason for the development and the results achieved in practice.

- No
 Yes

Please specify:

ONTARIO: Effective October 3, 2022, amendments were made to the Family Law Rules, O. Reg. 114/99 (<https://www.ontario.ca/laws/regulation/990114>) to support the expeditious resolution of international child abduction cases. The new rule 37.2 includes requiring:

¹ The term "State" in this Questionnaire includes a territorial unit, where relevant.

² This Part of the Questionnaire is intended to deal primarily with the developments in law and practice relating to international child abduction which have occurred in your State since the Seventh Meeting of the Special Commission (SC) to review the operation of the 1980 Abduction Convention and the 1996 Child Protection Convention (held from 10 to 17 October 2017) ("2017 SC").

- a first meeting of the parties with a judge not later than seven days after the case is started;
- these cases to be disposed of within six weeks;
- wherever possible a judge will be assigned at the start of the case to manage it and monitor its progress; and
- that the hearing will be by the judge who attends the first meeting.

ALBERTA: Effective July 1, 2022, the Court of King's Bench of Alberta has implemented a new Practice Note to govern the procedural rules for applications under the 1980 Convention: https://albertacourts.ca/docs/default-source/qb/revised-family-practice-note-6.pdf?sfvrsn=d1748883_12

FEDERAL LEVEL: Former Bill C-78, An Act to amend the Divorce Act, the Family Orders and Agreements Enforcement Assistance Act and the Garnishment, Attachment and Pension Diversion Act and to make consequential amendments to another Act (https://www.parl.ca/Content/Bills/421/Government/C-78/C-78_4/C-78_4.PDF), which received royal assent in June 2019, included amendments to federal family laws that are applicable in cases of international child abduction.

Amendments to Canada's Divorce Act (<https://laws-lois.justice.gc.ca/eng/acts/d-3.4/>) in former Bill C-78 that apply to cases of international child abduction came into force on March 1, 2021:

- The court can now include provisions in a parenting order (formerly known as a custody order) that will assist in preventing parental child abduction including an order that parenting time be supervised (ss. 16.1(8)) and a non-removal clause to prohibit the removal of a child from a specified geographic area without appropriate consent (ss. 16.1(9)). Non-removal clauses can help to prevent parental child abduction by clarifying for parents and third parties that a parent is not authorized to travel with a child outside of the identified geographic area (e.g. a province or Canada).
 - The Divorce Act's relocation scheme requires parents to give 60 days' notice before a proposed move that will have a significant impact on the child's relationship with their parents or other important people in their lives when there is an existing Divorce Act parenting (custody) order. The notice must include a proposal for modification of parenting arrangements and a parent may object to the proposed move within 30 days of receiving notice.
 - A Canadian court can only take jurisdiction to make a parenting order (spouse) or contact order (non-spouse) when a child is habitually resident outside Canada in exceptional circumstances and if the child is present in the province or territory (s. 6.3). A non-exhaustive list of factors that the court must consider when determining whether there are exceptional circumstances includes whether there is a sufficient connection between the child and the Canadian province or territory, the urgency of the situation, avoiding multiple proceedings, and discouraging child abduction.
- Former Bill C-78 included changes to the trace and locate services under Part I of the Family Orders and Agreements Enforcement Assistance Act (FOAEAA) (<https://laws-lois.justice.gc.ca/PDF/F-1.4.pdf>). These changes, once in force, will allow for federal, provincial and CAs under certain designated conventions, including the 1980 Convention, to apply and receive information that can assist in locating the missing child or children and the person who is believed to have the child or children with them. Regulatory amendments are required to implement these changes. Both legislative and regulatory changes are expected to come into force in the coming year. The amendments to the Divorce Act and the Family Orders and Agreements Enforcement Act in former Bill C-78 were part of significant package of amendments to federal family laws related to divorce, parenting and enforcement of family obligations. The legislative amendments promote the best interests of the child, address family violence, help to reduce child poverty, and make Canada's family justice system more accessible and efficient. As the amendments have only been in force for two years and international travel was significantly impacted by the Covid-19

pandemic, it is not yet possible to assess the impact of the Divorce Act amendments in cases of international child abduction.

2. Following the Covid-19 pandemic,³ have there been any **improvements** that have remained in your State in the following areas, in particular in relation to the **use of information technology**, as a result of newly adopted procedures or practices applicable to child abduction cases? In each case, please describe the tools, guidelines or protocols put in place.

a) Methods for accepting and processing return and access applications and their accompanying documentation;

In all jurisdictions, applications can be transmitted electronically to the CA. Some jurisdictions (e.g. Nova Scotia, Manitoba) however require original documents to follow.

In some jurisdictions (e.g. Alberta, Ontario) the Court uses an electronic filing process for documentation and electronic court document.

b) Participation of the parties and the child (e.g., appearance in court proceedings, mediation);
At the Canadian level, there is an increased use of teleconference and videoconference in court proceedings since the pandemic. In some jurisdictions, virtual court hearings are now generally accepted.

In Canada, parties have attended hearings on return applications via Zoom, Teams or Webex and in some jurisdictions, have given evidence orally via these platforms.

This has increased participation of left-behind parents from abroad. In at least one case, it allowed the left-behind parent to make undertakings on the record from abroad. In another case, it allowed the left-behind parent to participate in the first case management call during which the parties resolved the case. In a few cases, it also allowed a left-behind parent whose language was neither French nor English to attend the hearing with their interpreter.

The use of technology in courtrooms has many benefits but it also presents some challenges. Access to technology varies both at the global and domestic levels. In Canada, not all Courtrooms are equipped for hybrid hearings. In some recent Hague cases, connectivity problems in the other Contracting Party have caused delays in the Canadian return proceedings.

c) Promoting mediation and other forms of amicable resolution;
Practices in this area were not impacted by the pandemic.

d) Making arrangements for organising or securing the effective exercise of rights of access, including while pending return proceedings;
Practices in this area were not impacted by the pandemic.

e) Obtaining evidence by electronic means;
In some jurisdictions, there is an increased use of electronic evidence, for which Courts are now better equipped (e.g. in Alberta).

f) Ensuring the safe return of the child;
As mentioned above, in at least one case, the use of technology has allowed the left-behind parent to make undertakings on the record from abroad which were intended to facilitate the safe return of the child.

³ This question aims to gather information about good practices that were developed in those exceptional circumstances and that will continue to be applied regardless of the pandemic.

- g) Cooperation between Central Authorities and other authorities;
Practices in this area were not impacted by the pandemic.
- h) Providing information and guidance for parties involved in child abduction cases;
Practices in this area were not impacted by the pandemic.
- i) Other, please specify.
Please insert text here

3. Please provide the three most **significant decisions concerning the interpretation and application of the 1980 Convention** rendered since the 2017 SC by the relevant authorities⁴ in your State.

Case Name	Court Name	Court Level	Brief summary of the ruling
Office of the Children’s Lawyer v. Balev, 2018 SCC 16	Supreme Court of Canada	Superior Appellate Court	The majority adopted a “hybrid approach” to determining habitual residence under Article 3 of the 1980 Convention, and a non-technical approach to considering a child’s objection to removal under Article 13(2) of the Convention. Courts in Canada have elaborated further on the notion of habitual residence notably in the following decisions: - K.F. v. J.F, 2022 NLCA, https://canlii.ca/t/jpffn ; - Ludwig v. Ludwig, 2019 ONCA 680, https://canlii.ca/t/j26rd ; - Beairsto v. Cook, 2018 NSCA 90, https://canlii.ca/t/hw5sf
Droit de la famille – 182267, 2018 QCCA 1791	Court of Appeal of Quebec	Appellate Court	The exception of settling the child in their new environment is intended to avoid uprooting the child again, when the parent files a judicial application more than one year after the illegal removal or retention. The concept of integration is assessed from the child’s perspective and is based on a physical and a psychological component, thus allowing to distinguish adaptation from integration.
Bakker v Bakker, 2020 BCSC 1620	Supreme Court of British Columbia	Court of first instance	The Court determined that a wrongful retention can occur before an agreed-upon return date (i.e. an anticipatory retention can properly constitute a wrongful retention).

4. Please provide a brief summary of **any other significant developments** in your State since the 2017 SC.

⁴ The term “relevant authorities” is used in this Questionnaire to refer to the judicial or administrative authorities with decision-making responsibility under the 1980 Convention. Whilst in the majority of Contracting Parties such “authorities” will be courts (i.e., judicial), in some States Parties administrative authorities remain responsible for decision-making in Convention cases.

Appellate Courts in Canada have been discussing the issue of a stay of a return order pending appeal and have applied slightly different tests in doing so. The relevant decisions are:

- CCO v JJV, 2019 ABCA 292, <https://canlii.ca/t/j1nfr>
- K.M.F. v J.M.F, 2022 NLCA 4, <https://canlii.ca/t/jlrwx>
- Dieffenbacher v. Dieffenbacher IV, 2023 ONCA 189, <https://canlii.ca/t/jw7gc>
- Zafar v. Saiyid, 2017 ONCA 919, <https://canlii.ca/t/hp0lp>

Issues of compliance

5. Has your State faced any particular **challenges with other Contracting Parties** to the 1980 Convention in achieving successful cooperation? Please specify the challenges that were encountered and, in particular, whether the problems appear to be systemic.

- No
 Yes

Please specify the challenges encountered:

Achieving successful cooperation is difficult with some Contracting Parties. For outgoing cases specifically, the main challenges are:

- a lack of updated contact information for the CAs;
- unexplained delays in obtaining an acknowledgement of receipt for an application and/or in obtaining responses to queries regarding its status;
- passivity on the part of requested CA not proactively taking steps to advance the case;
- requested CA not accepting application and supporting documents translated into French or English;
- delays in locating a child;
- difficulties or delays in securing legal representation or legal aid for the left-behind parent in the requested State;
- court processes slow, unclear and complex in first instance and at the appeal level;
- in one case, a judge set aside the application for return on the basis that the left-behind parent did not appear in person in the requested State and despite the fact that the left-behind parent was represented by counsel at the hearing;
- delays in enforcement of a return order or inability to enforce a return order;

For incoming cases specifically, the main challenges are:

- documents that are not accompanied by a proper translation as required under article 24 of the 1980 Convention;
- difficulties in obtaining information on the applicable law in the requesting State.

These difficulties and challenges mostly appear to be systemic, due to the lack of sufficient resources or because some CAs take a “hands off” approach resulting in a reactive rather than proactive approach in relation to files. However, in some states, CAs also appear to have a limited or inaccurate understanding of their duties under the Convention.

6. Are you aware of situations or circumstances in which there has been **avoidance or improper application** of the 1980 Convention as a whole or any of its provisions in particular?

- No
 Yes

Please specify:

Some States have legal remedies/recourses which have the effect of staying Hague applications or putting them aside, pending determination of that remedy/recourse. This often results in negating the effectiveness of the Convention. Canada strongly feels that where such remedies/recourses are invoked, the competent authorities

should be required to take all reasonable steps to ensure that the matter is treated expeditiously.

In some States, Courts hearing Hague applications engage in lengthy and full analysis of the best interests of the child and of the parenting capabilities of the parents, which is contrary to the Convention. This can lead to non-return decisions that are not justified under the Convention or result in significant delays.

Addressing delays and ensuring expeditious procedures

7. The 2017 SC encouraged States to review their procedures (including, where applicable, at the Central Authority, judicial, enforcement and mediation / other alternative dispute resolution - “ADR” phases)⁵ in order to identify possible sources of delay and implement the adjustments needed to secure shorter time frames consistent with Articles 2 and 11 of the Convention. Please indicate any identified sources of delay at the following phases:

Central Authority

- No
 Yes
 Procedure not yet revised

If the answer to the above is YES, please share any measures that have been implemented to address the delays:

Canadian CAs are conscious of the need to act expeditiously under the Convention and have not identified any significant sources of delay at their level. Delays may occur, however, if applications for return are incomplete or if information on the whereabouts of the child is difficult to obtain.

Proactive “flagging” of Hague cases by CAs to Court registries, Associate Chief Justices and/or the liaison judges for their jurisdiction has become the norm and is useful for triggering the Court process and ensuring that the case is scheduled quickly. CAs do this by promptly filing art. 16 notices and, in some jurisdictions, writing to the Associate Chief Justice or the liaison judge to make them aware of any new Hague case.

Judicial proceedings

- No
 Yes
 Procedure not yet revised

If the answer to the above is YES, please share any measures that have been implemented to address the delays:

The Supreme Court of Canada (SCC), in the case *Balev* (2018 SCC 16; <https://canlii.ca/t/hrlfk>), insisted that 1980 Convention cases cannot tolerate judicial delays. It indicated in its decision that it had taken steps to ensure that 1980 Convention cases are flagged internally and expedited by its registry. The SCC also invited other Canadian courts to consider what further steps can be taken to ensure that 1980 Convention proceedings are determined using the most expeditious procedures available. The SCC noted that judges seized of 1980 Convention applications should not hesitate to use their authority to expedite proceedings in the interest of the children involved and that Convention proceedings should be judge-led and not party-driven (at para. 89).

⁵ See C&R No 4 of the 2017 SC, “The Special Commission acknowledges that some States have made progress in reducing delays and encourages States to review their procedures (including, where applicable, at the Central Authority, judicial, enforcement and mediation / ADR phases) in order to identify possible sources of delay and implement the adjustments needed to secure shorter time frames consistent with Articles 2 and 11 of the Convention.”

In *Leigh v. Rubio*, 2022 ONCA 582 (<https://canlii.ca/t/jrf23>), the Court of Appeal for Ontario also insisted on the importance of using case management tools to deal with Conventions applications quickly and ensure that the scope of the hearing remains focused on the issues in dispute.

In two cases, the Courts of appeal of Ontario and Alberta have declined to stay return orders pending appeals, notably in order to minimize judicial delays. (*CCO v. JJV*, 2019 ABCA 292, *Dieffenbacher v. Dieffenbacher IV*, 2023 ONCA 189).

In Alberta, a new practice note was implemented in the summer of 2022 to expedite the process. Following the receipt of an Article 16 notice and application for return, the Courts in Alberta will promptly schedule a case management meeting in an attempt to narrow issues and set the matter for hearing. (https://www.albertacourts.ca/docs/default-source/qb/revised-family-practice-note-6.pdf?sfvrsn=d1748883_12).

In Ontario, the Family Law Rules, O. Reg. 114/99 (<https://www.ontario.ca/laws/regulation/990114>) were amended in 2022 to expedite international child abduction proceedings (see response to question 1).

Enforcement

- No
 Yes
 Procedure not yet revised

If the answer to the above is YES, please share any measures that have been implemented to address the delays:

This is not new, but in general, to avoid delays at the enforcement level, Courts include specific provisions and short timelines for actual return of the child as part of the return order. Courts can also include police enforcement clauses to assist with achieving compliance.

Mediation / ADR

- No
 Yes
 Procedure not yet revised

If the answer to the above is YES, please share any measures that have been implemented to address the delays:

Court proceedings and promptness

8. Does your State have mechanisms in place to deal with return decisions within six weeks (e.g., production of summary evidence, limitation of appeals, swift enforcement)?

- No
 Yes
 Please specify:

Jurisdictions in Canada have mechanisms to expedite the treatment of return applications, even though cases are often resolved in more than the 6-week period. While such mechanisms may vary from one jurisdiction to another, they include the following:

- the development by courts of “protocols”, rules of court, bench books and practice directives;
- judicial training and education;
- trial coordinators prioritizing hearings on return applications (trial and appeals level);
- the use of judicial case management;
- the use of affidavit evidence in some jurisdictions;
- the use of electronic evidence in some jurisdictions;
- including specific provisions and short timelines for actual return of the child as part of the return order.

Some relevant links:

- BRITISH COLUMBIA : Practice Direction Return Applications under the 1980 Hague Convention on the Civil Aspects of International Child Abduction – Procedural Requirements:

https://www.bccourts.ca/supreme_court/practice_and_procedure/practice_directions/family/FPD-16_Return_Applications_pursuant_to_1980_Hague_Protocol_Procedural_Requirements.pdf;

- MANITOBA: Procedural Protocol for the Handling of Return Applications under the 1980 Hague Convention on the Civil Aspects of International Child Abduction, Manitoba Court of Queen's Bench (as it then was, now the Court of King's Bench), Family Division:

https://www.manitobacourts.mb.ca/pdf/procedural_protocol_for_handling_return_applications.pdf;

- ONTARIO: s. 46 Children's Law Reform Act, R.S.O. 1990, c. C.12 (<https://www.ontario.ca/laws/statute/90c12>) and s. 37.2 Family Law Rules, O. Reg. 114/99 (<https://www.ontario.ca/laws/regulation/990114>);

- QUÉBEC: s. 19 Act respecting the civil aspects of international and interprovincial child abduction, CQLR c A-23.01 : <https://canlii.ca/t/z06>;

9. If the response to question 8 above is “No”, does your State contemplate implementing mechanisms to meet the requirement of prompt return under the 1980 Convention (e.g., procedures, bench-books, guidelines, protocols)?

No
Please specify:
Please insert text here

Yes
Please specify:
Please insert text here

10. Do the courts in your State make use of direct judicial communications⁶ to ensure prompt proceedings?

No
 Yes
Please specify:
Canadian judges in all jurisdictions can engage in direct judicial communications if needed, but it remains rare. The three Canadian judges designated for the purposes of the IHNJ assist with all incoming and outgoing requests for direct judicial communications.

⁶ For reference, see “Direct Judicial Communications - Emerging Guidance regarding the development of the International Hague Network of Judges and General Principles for Judicial Communications, including commonly accepted safeguards for Direct Judicial Communications in specific cases, within the context of the International Hague Network of Judges”.

Direct judicial communications have helped expedite proceedings, for example by allowing a judge hearing a return application in Canada to obtain quickly information about the Court processes or measures available in the other State or the possibility of enforcing undertakings made in Canada in the other State.

11. If your State has not designated a judge to the International Hague Network of Judges (IHNJ) does your State intend to do so in the near future?

- No
 Yes

Please specify:

Please insert text here

12. Please comment upon any cases (where your State was the requested State) in which the judge (or decision-maker) has, before determining an application for return, communicated with a judge or other authority in the requesting State regarding the issue of the child's safe return. What was the specific purpose of the communication? What was the outcome?

In the case of *Mbuyi v Ngalula*, 2018 MBQB 176 (<https://canlii.ca/t/hw3zs>), the Canadian judge communicated with an American judge (from an Iowa Court) to discuss:

- the timeliness of, and options for obtaining interim custody, access and support orders as well as civil protective orders in Iowa;
- the possibility of having an order made in Canada or undertakings made by the left-behind parent recognized and enforced in Iowa.

The role and functions of Central Authorities designated under the 1980 Convention

In general

13. Have any of the duties of Central Authorities, as set out in **Article 7** of the 1980 Convention, raised any particular problems in practice either in your State, or in Contracting Parties with which your State has cooperated?

- No
 Yes

Please specify:

Examples of practical difficulties encountered by Canada in outgoing cases include:

- the repeated failure of some CAs to respond to requests for information or assistance for specific files;
- certain requested States do not have effective means to locate children (art. 7a);
- certain CAs provide only limited assistance to the left-behind parent seeking legal representation (art. 7g);
- certain CAs provide only limited assistance to secure the safe return of a child following a return order (art. 7h);
- in a current case, the prosecutor in the requested State has been resisting to initiate the court application for return despite the fact that all of the requirements of the Convention have been met on a prima facie basis (Article 7(i)).
- in some instances, we have also encountered difficulties where a foreign CA insists on communicating only via diplomatic channels rather than directly from one CA to another, as contemplated by the Convention.

14. Has your Central Authority encountered any challenges with the application of **any of the 1980 Convention provisions**? If so, please specify.

- No
 Yes

Please specify:

- The extent of the duties of CAs under art. 21 of the Convention is unclear and the practice therefore varies greatly from one Contracting Party to another;
- Some States send documentation in the original language without the translation required under art. 24;
- Some States do not provide responses to art. 11 letters sent by requesting CAs;

Legal aid and representation

15. Do the measures your Central Authority takes to provide or facilitate the provision of legal aid, legal advice and representation in return proceedings under the 1980 Convention (**Art. 7(2)(g)**) result in delays in proceedings either in your own State, or, where cases originate in your State, in any of the requested States that were dealt with?

- No
 Yes

Please specify:

For incoming cases, the measures taken by Canadian CAs to assist parents seeking legal representation through legal aid or private counsel do not cause notable delays in the return process. There may be delays however, for example, where a parent is slow in making arrangements to hire a lawyer or in completing the proper forms and documentation to support their application for legal aid. There may also be some delays when the parties change counsel during the proceedings. Self-representation of one or both parties (sometimes because they do not qualify for legal aid and are unable to afford legal representation) may also lead to delays.

16. Are you aware of any other challenges in your State, or, where cases originate in your State, in any of the requested States your Central Authority has dealt with, regarding the **obtaining of legal aid, advice and / or representation for either left-behind parents or taking parents**?⁷

- No
 Yes

Please specify:

For outgoing cases, some requested States provide very little or no information to assist parents in locating qualified legal counsel to represent them in a Hague application or take significant time to do so. Difficulties have arisen locating counsel in a specific geographic area or locating counsel having experience in the area of family law who is able to appear in the relevant court or who will accept to work pro bono or for a reduced-fee. Applicants should be aware that in some States pro bono does not necessarily mean free. Where a State does not provide legal aid or legal assistance at a reduced-fee left-behind parents may often be unable to file an application to Court for the return of their abducted children. In addition, the fact that some CAs provide little or no information about the court process can make it very difficult for left-behind parents to self-represent.

Locating the child

17. Has your Central Authority encountered any **challenges with locating children** in cases involving the 1980 Convention, either as a requesting or requested State?

- No
 Yes

⁷ See paras 1.1.4 to 1.1.6 of the C&R of the Fifth Meeting of the SC to review the operation of the 1980 Child Abduction and the practical implementation of the 1996 Child Protection Convention (30 October – 9 November 2006) (2006 SC C&R) and paras 32 to 34 of the C&R of the Sixth Meeting of the SC to review the operation of 1980 and 1996 Conventions (1-10 June 2011 and 25-31 January 2012) (2012 SC C&R), available on the HCCH website at www.hcch.net under “Child Abduction Section” then “Special Commission meetings”.

Please specify the challenges encountered and what steps were taken or are considered to be taken to overcome these challenges:

Canada has encountered challenges with locating children, especially in outgoing cases. Some CAs have no means of locating children and have not created the necessary domestic linkages with law enforcement officials or other authorities who may be of assistance in locating children. In some instances as well, some authorities do not seem to make the necessary follow-ups despite the information transmitted

As a requested State, Canada relies heavily on good linkages with other domestic authorities who are in a position to facilitate or investigate the whereabouts of children who are subjects of incoming 1980 Convention applications. In some cases, a child can nevertheless be difficult to locate (e.g. when there are no government record for the child and taking parent).

Voluntary agreements and bringing about an amicable resolution of the issues

18. How does your Central Authority (either directly or through any intermediary) take, or is considering taking, appropriate steps under **Article 7(c)** to bring about an amicable resolution of the issues? Please explain:

In Canada, provincial and territorial CAs can take a variety of approaches to encourage a voluntary return. With the consent of the left behind parent, most CAs contact the taking parent or their lawyer, either by letter or by telephone, to discuss or encourage a voluntary return. Some CAs refer the parents to free mediation services.

19. In the case that your Central Authority offers mediation services, or other alternative dispute resolution methods to bring about an amicable resolution of the issues, has your Central Authority reviewed these procedures in the light of the framework of international child abduction cases (e.g., by providing trained, specialised mediators, including with cross-cultural competence and necessary language skills⁸)?

Please specify:

The provincial and territorial CAs that offer mediation rely on trained mediators, have done so in several languages (English, French and Spanish) and put a strong focus on diversity and cross-cultural competence.

20. Should the services mentioned in the question above not yet be provided, does your Central Authority intend to provide them in the future?

Please provide comments:

The provincial and territorial CAs that do not provide mediation have no current plan to do so at this time.

21. Has your State considered, or is it in the process of considering, the establishment of a central service for international family mediation to facilitate access to information on available mediation services and related issues for cross-border family disputes involving children?⁹

No

⁸ For reference, please see the recommendation in the Guide to Good Practice on Mediation, item 3.2, paras 98-105, "Specific training for mediation in international child abduction cases", available on the HCCH website at www.hcch.net under "Child Abduction Section" then "Guides to Good Practice".

⁹ As it has been encouraged in the Guide to Good Practice on Mediation, Chapter 4, on "Access to Mediation". paras 114-117. See also 2011 / 2012 SC C&R at para. 61.

Please explain:

Please insert text here

Yes

Please explain:

Please insert text here

Ensuring the safe return of children¹⁰

22. How does the competent authority in your State obtain information about the protective measures available in the requesting State when necessary to ensure the safe return of the child?

Please explain:

We understand the term “protective measures” as it is defined in the Guide to Good Practice on 13(1)(b), as “measures available to address a grave risk”.

Courts will usually obtain information about protective measures through submissions made by the parties or through the CAs (the provincial or territorial CA communicating with the foreign CA). Courts would more rarely obtain this information through direct judicial communications.

23. If requested as a safe return measure (e.g., in accordance with the 1996 Convention), would your Central Authority be in a position to provide, either directly or through intermediaries, a report on the situation of the child after a certain period of time after the return?

No

Yes

Please specify:

The nature and scope of what constitute a “safe return measure” is unclear. In any event, we do not see a scenario where providing a report on the situation of the child following their return would ensure the safe return of the child.

In any case, in our view, monitoring the situation of the child following the return of the child is not within the role of CAs under the 1980 Convention. In those jurisdictions where family law files are confidential, the CAs may not have access to them. In addition, in most if not all Canadian jurisdictions, legislation would prohibit or strictly limit their ability to gather personal information regarding a child and his or her parents in such circumstances. In Canada’s view, it is the role the authorities in requesting States to look after the children once they are returned to the requesting States, including where necessary under child welfare legislation.

We anticipate that CAs in Canada (assuming Canada becomes party to the 1996 Convention) would consider using Article 32 to request a report on the child’s situation only where such information would be needed to make a decision (take a measure of protection) in regard to the child in Canada. Such application would be consistent with the wording of Article 32. It is not anticipated that Canadian CAs would use Article 32 to request information as a matter of course to follow-up on a child’s situation after his or her return to the State of habitual residence. In this regard, Canadian authorities are very mindful of the need to respect the child and the parents’ right to privacy regarding personal and family matters. We should also add that Canadian authorities would very likely not have the authority under domestic law to even request or collect information on the child or his or her parents for such purpose.

¹⁰ See Art. 7(2)(h) of the 1980 Convention.

Information exchange, training and networking of Central Authorities

24. Has your Central Authority shared experiences with other Central Authority(ies), for example by organising or participating in any networking initiatives such as regional meetings of Central Authorities, either in person or online?¹¹

- No
 Yes

Please specify:

Canada has made itself available to other CAs through e-mail exchanges, teleconferences, videoconferences and face-to-face meetings where feasible. The exchanges varied based on the level of experience and knowledge of the other CA and the purpose of the meeting. Canada recognizes the value of these meetings as an opportunity to develop a closer working relationship with certain Contracting parties, and share best practices under the Convention.

Canada has organized and participated in various networking initiatives amongst CAs. At the domestic level, quarterly meetings of the 14 Canadian CAs are organized where CAs discuss and exchange ideas, procedures and good practices. From time to time, in-person meetings of Canadian CAs are also convened. Throughout these initiatives, other important stakeholders such as those who lead on Hague policy matters, law enforcement, border, passport and immigration officials are also invited to participate. In 2019, Canada organized and hosted 2 national meetings involving 1) Canadian CAs and representatives from various federal departments, and 2) Canadian CAs and the US CA. Each meeting was an opportunity to exchange good practices and to learn about the roles and responsibilities of the CAs within Canada and the US CA.

In October 2020, Canada organized a video call with the Mexican CA. This provided an opportunity for the CAs of both countries to have a detailed exchange on operational practices and unique aspects of the respective legal systems that apply in the processing of 1980 Convention applications. The two States had agreed to exchange questions in advance on various important topics covering roles of CAs as both requesting and requested States and the operation of the Convention in both States.

In March 2023, the Federal CA, the Manitoba CA as well as one of Canada's IHNJ judge participated virtually in a conference on international parental child abduction organized by a IHNJ judge for Brazil. The conference included participation from CAs, judges as well as NGOs working on issues related to child abduction. Representatives from the UK, the US, Australia and Brazil also participated in the conference.

Case management and collection of statistical data on applications made under the Convention

25. Has your Central Authority developed any protocols or internal guidelines for the processing of incoming and outgoing cases?

- No
 Yes

Please specify and share the relevant instruments whenever possible:

Many Canadian CAs have developed their own internal processes for dealing with incoming and outgoing cases, for example, internal procedure manuals or internal policies. Some have also developed their own forms for return or access applications under the Convention.

26. Does your Central Authority operate a case management system for processing and tracking incoming and outgoing cases?

¹¹ See, in particular, Chapter 6.5, on twinning arrangements, of the Guide to Good Practice – Part I – Central Authority Practice, available on the HCCH website at www.hcch.net (see path indicated in note 8).

- No
 Yes

Please specify:

All CAs have a filing system to process and track open and closed files.

27. Does your State collect statistical data on the number of applications made per year under the 1980 Convention (e.g., number of incoming and / or outgoing cases)?¹²

- No
 Yes

In case this information is publicly made available, please share the links to the statistical reports:

The information is not publicly available with the exception of the Annual Report of the Québec CA which was published for the first time for 2020-2021.

- https://cdn-contenu.quebec.ca/cdn-contenu/adm/min/justice/publications-adm/rapports/acq/RA_ACQ_2020-2021_MJQ.pdf
- https://cdn-contenu.quebec.ca/cdn-contenu/adm/min/justice/publications-adm/rapports/acq/RA_ACQ_2021-2022_MJQ.pdf

Transfrontier access / contact¹³

28. Since the 2017 SC, have there been any significant developments in your State regarding Central Authority practices, legislation, procedural rules or case law applicable in cases of transfrontier access / contact?

- No
 Yes

Please specify:

FEDERAL LEVEL: Former Bill C-78, An Act to amend the Divorce Act, the Family Orders and Agreements Enforcement Assistance Act and the Garnishment, Attachment and Pension Diversion Act and to make consequential amendments to another Act, which received royal assent in June 2019, included amendments to the Divorce Act that are applicable in cases of transfrontier access/contact. These amendments came into force on March 1, 2023:

- The amended Divorce Act includes new terminology related to parenting, which emphasizes the responsibilities that parents have for their children. When deciding parenting arrangements based on the best interests of the child, a court will now make a parenting order for decision-making responsibility and parenting time. A spouse who had custody under the previous Divorce Act will now have decision-making responsibility and parenting time, and a spouse who had access will now have parenting time. A court can also make a contact order to allow a non-spouse, such as a grandparent, to spend time with a child of the marriage where it is not possible for them to see the child during either of the spouse's parenting time. A non-spouse must seek leave of the court to make an application for a contact order.
- Please see the response to question 1 regarding Divorce Act provisions concerning jurisdiction, relocation, and supervised parenting orders and non-removal clauses in parenting orders which are also applicable in cases of transfrontier access/contact.

¹² In the Country Profile for the 1980 Child Abduction Convention, question No 23(e), States are asked to inform whether statistics related to applications under the Convention are publicly available. Please note that, at its meeting of 2021, according to Conclusion & Decision (C&D) No 19, the Council on General Affairs and Policy (CGAP) mandated the discontinuance of INCASTAT.

¹³ See C&R Nos 18-20 of the 2017 SC.

29. Has your Central Authority encountered any problems as regards cooperation with other States in making arrangements for organising or securing the effective exercise of rights of access / contact?

- No
- Yes

Please specify:

- As mentioned above, the extent of the duties of CAs under art. 21 of the Convention is unclear and the practices vary greatly from one Contracting Party to another;
- Legal aid, pro bono, or affordable legal representation may not be available to noncustodial parents which creates a hardship for some Convention applicants;
- Some States have no means of enforcing access orders;
- Mediation is offered in some States but may not result in an enforceable agreement;
- Meaningful access is not provided for under the law of some States.

30. Has your State had any challenges, or have questions arisen, in making arrangements for organising or securing the effective exercise of rights of access / contact under **Article 21** when the application was *not* linked to an international child abduction situation?¹⁴

- No
- Yes

Please specify:

The challenges related to art. 21 arose whether the application was linked to an international child abduction situation or not.

31. In the case of access / contact applications under **Article 21**, which of the following **services** are provided by your Central Authority?

Position	Services provided
A request of assistance to organise or secure effective exercise of rights of access in another Contracting Party (as requesting State)	<ul style="list-style-type: none"> <input type="checkbox"/> 1. Assistance in obtaining information on the operation of the 1980 Convention <input type="checkbox"/> 2. Assistance in obtaining information on the relevant laws and procedures in the requested State <input type="checkbox"/> 3. Establishment of contact with the Central Authority and / or the competent authorities in the requested State to find out the kind of assistance such authorities could provide <input type="checkbox"/> 4. Transmission of the request to the Central Authority or to the competent authorities in the requested State <input type="checkbox"/> 5. Assistance in initiating judicial or administrative proceedings with a view to making arrangements for organising or securing the effective exercise of rights of access <input type="checkbox"/> 6. Assistance in providing or facilitating the provision of legal aid and advice <input type="checkbox"/> 7. Assistance in obtaining private legal counsel or mediation services, where needed in the requested State <input type="checkbox"/> 8. Referral to other governmental and / or non-governmental organisations for assistance <input type="checkbox"/> 9. Provision of regular updates on the progress of the application <input type="checkbox"/> 10. Other, please specify: Specific services may vary from one province or territory to another. However, in general, as a requesting State, Canadian CAs would themselves provide services under no 1, 3, 4 and would act as a “conduit” between the applicant and the requested CA concerning all other aspects of the case. For example, the provincial and territorial CAs generally would not assist an applicant in obtaining private legal counsel in the other State. They would

¹⁴ According to C&R No 18 of the 2017 SC, “The Special Commission agrees that an application to make arrangements for organising or securing the effective exercise of rights of access / contact under Article 21 can be presented to Central Authorities, independently of being linked or not, to an international child abduction situation.”

<p>A request of assistance to organise or secure effective exercise of rights of access in your State (as requested State)</p>	<p>however collaborate with a requested CA providing assistance in obtaining private legal counsel and transfer all relevant information to the applicant.</p> <p><input type="checkbox"/> 1. Providing information on the operation of the 1980 Convention and / or the relevant laws and procedures in your State</p> <p><input type="checkbox"/> 2. Assistance in initiating judicial or administrative proceedings with a view to making arrangements for organising or securing the effective exercise of rights of access</p> <p><input type="checkbox"/> 3. Assistance in providing or facilitating the provision of legal aid and advice</p> <p><input type="checkbox"/> 4. Assistance in obtaining private legal counsel or mediation services available in your State</p> <p><input type="checkbox"/> 5. Referral to other governmental and / or non-governmental organisations for assistance</p> <p><input type="checkbox"/> 6. Regular updates on the progress of the application</p> <p><input type="checkbox"/> 7. Other, please specify: Specific services vary from one province or territory to another. For example, Alberta and Québec do provide the service listed under no. 2 whereas other CAs generally do not, but they do not provide the service listed under no. 5 whereas other CAs generally do.</p>
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32. Should your State also be a Contracting Party to the 1996 Convention, are you aware of any use being made of **provisions of the 1996 Convention**, including those under Chapter V, **in lieu of or in connection with an application under Article 21** of the 1980 Convention?

- No
- Yes

Please specify:
Please insert text here

Special topics

Obtaining the views of a child in a child abduction case

33. When obtaining the views of a child in a child abduction proceeding in your State’s jurisdiction, what are the elements normally observed and reported by the person hearing the child (e.g., expert, judge, guardian *ad litem*? (E.g., the views of the child on the procedures, the views of the child on the subject of return, the maturity of the child, any perceived parental influence on the child’s statements)?

Please explain:

The elements observed depend of the age of the child and of the purpose for which their views were obtained.

Views of the child are most frequently obtained in relation to the art. 13(2) exception. In such cases, elements most frequently reported include: the views of the child on whether they object to return to their state of habitual residence, the maturity of the child and any perceived parental influence on the child’s statements.

In *Balev*, the Supreme Court of Canada held that “determining sufficient age and maturity in most cases is simply a matter of inference from the child’s demeanor, testimony, and circumstances”, that “in some cases, it may be appropriate to call expert evidence or have the child professionally examined” but that “this should not be allowed to delay the proceedings”. The Court also held that “the child’s objection should be assessed in a straight-forward fashion – without the imposition of formal conditions or requirements not set out in the text of the Hague Convention” (2018 SCC 16; <https://canlii.ca/t/hrfkf> at para. 79-80).

34. Are there are any procedures, guidelines or principles available in your State to guide the person (e.g, expert, judge, guardian *ad litem*) in seeking the views of the child in a child abduction case?

- No
 Yes

Please specify:

There are no procedures, guidelines or principles specific to child abduction cases.

Article 15

35. As requesting State (outgoing applications), how often have judicial or administrative authorities in your State received requests for Article 15 decisions or determinations?

- Do not know
 Never
 Rarely
 Sometimes
 Very often
 Always

36. As requested State (incoming applications), how often have judicial or administrative authorities in your State requested Article 15 decisions or determinations?

- Do not know
 Never
 Rarely
 Sometimes
 Very often
 Always

37. Please indicate any good practices your State has developed to provide as complete as possible information in the return applications as required under Article 8 with a view to speed up proceedings?

Please indicate:

- Providing fulsome explanations to left-behind parents about the process, required information, forms needing to be completed;
- Providing assistance to left-behind parents in completing the required forms and ensuring that the information is presented as clearly as possible;
- Making sure that all required documents are attached and have been translated when required;
- Thorough communication through email with other CAs.
- Where relevant, Canadian CAs can provide information concerning the law applicable in their province or territory concerning rights of custody, either in the form of an affidavit of law, a declaration and/or by providing a copy of the relevant legislation.

38. Considering C&R No 7 of the 2017 SC,¹⁵ what information do you suggest adding to the Country Profile for the 1980 Convention, either as requested State or requesting State in relation to Article 15?

Please insert your suggestions:

A question on whether the decision on art. 15 is obtained ex parte or whether the taking parent can participate in such proceedings could be added to the Country Profile.

¹⁵ See C&R No 7: "The Special Commission recommends amending the Country Profile for the 1980 Convention to include more detailed information on the Article 15 procedure. It is further recommended that an Information Document on the use of Article 15 be considered with, if necessary, the assistance of a small Working Group."

Relationship with other international instruments on human rights

39. Has your State faced any challenges, or have questions arisen, in processing international child abduction cases where there was a **parallel refugee claim** lodged by the taking parent?

- No
 Yes

If possible, please share any relevant case law or materials that are relevant to this type of situation in your State or, alternatively, a summary of the situation in your State: Canadian Courts have been seized with return applications under the 1980 Convention where the taking parent had made a refugee claim for them and/or the child or where the taking parent and/or the child had been granted refugee status.

Canadian Courts have generally refused to suspend the Hague proceedings during the refugee claim process and held that an order for the return of a child under the Convention could be made while a refugee claim on behalf of child is pending.

The weight given to a refugee claim or to refugee status in the determination of habitual residence or the application of the exceptions under the Convention has varied. According to the Ontario Court of Appeal, the determination of refugee status for the child gives rise to a rebuttable presumption of a risk of harm within the meaning of art. 13(1)(b).

Caselaw:

Pending refugee applications:

- Singh v. Kaur, 2022 MBQB 46 (<https://canlii.ca/t/jnbhv>)
- Kovacs v. Kovacs, [2002] OJ No 3074 (QL) (<https://canlii.ca/t/1w3mt>)
- Toiber v. Toiber, [2006] OJ No 1191 (QL) (<https://canlii.ca/t/1mx5z>)
- Aza v. Zagroudnitski, 2014 ONCJ 293 (<https://canlii.ca/t/g7gvh>)
- G.B. v. V.M., 2012 ONCJ 745 (<https://canlii.ca/t/fv5fd>)
- R.G. v. K.G., 2019 NBQB 46 (<https://canlii.ca/t/hzqkb>)

Child refugee status:

- A.M.R.I. v. K.E.R., 2011 ONCA 417 (<https://canlii.ca/t/flp6w>)
- Borisovs v. Kubiles, 2013 ONCJ 85 (<https://canlii.ca/t/fwbtj>)
- Sabeahat v. Sabihat, 2020 ONSC 2784 (<https://canlii.ca/t/j89bb>)

- Do not know

40. Has the concept of the **best interest of the child** generated discussions in your State in relation to child abduction proceedings? If it is the case, please comment on any relevant challenges in relation to such discussions.

- No
 Yes

Please provide comments:

Canadian courts recognize that the best interests of wrongfully retained or removed children are met through the application of the 1980 Convention (prompt return of the child subject to the limited exceptions provided by the Convention). Furthermore, the issue of best interests of the child with respect to custody and access rights are better left to be determined by the Contracting Party in which the child was habitually resident before the wrongful removal or retention.

In 2018, the Supreme Court of Canada confirmed that there is no conflict between the 1980 Convention and the Convention on the Rights of the Child (Office of the Children's Lawyer v. Balev, 2018 SCC 16, at para. 34 - <https://canlii.ca/t/hr1fk>).

Use of the 1996 Convention¹⁶

41. If your State is not Party to the 1996 Convention, is consideration being given to the possible advantages of the 1996 Convention (please comment where applicable below):

(a) providing a jurisdictional basis for urgent protective measures associated with return orders (Arts 7 and 11)

As part of the continued efforts towards ratification, we are notably considering the fact that the 1996 Convention reinforces and complements the 1980 Convention. We are therefore taking into account all the benefits of the 1996 Convention listed in (a) to (e).

(b) providing for the recognition of urgent protective measures by operation of law (Art. 23)
See response under (a)

(c) providing for the advance recognition of urgent protective measures (Art. 24)
See response under (a)

(d) communicating information relevant to the protection of the child (Art. 34)
See response under (a)

(e) making use of other relevant cooperation provisions (e.g., Art. 32)
See response under (a)

42. If your State is a Party to the 1996 Convention, does your State make use of the relevant cooperation provisions (e.g., Art. 32) to provide, if requested, either directly or through intermediaries, a report on the situation of the child after a certain period of time after the return?¹⁷

- No
 Yes

Please specify:

Please insert text here

Primary carer and protective measures

43. Are you aware of any cases in your State where a primary carer taking parent, for reasons of personal security (e.g., domestic or family violence, intimidation, coercive control, harassment, etc.) or others, has refused or has not been in a position to return with the child to the requesting State? How are such cases dealt with in your State?

Please explain and provide case examples where possible:

In a non-Hague case, (where the applied standard was that of “serious harm” under s. 23 of the Ontario Children’s Law Reform Act, which is lower than the grave risk of harm under art. 13(1)(b) of the 1980 Convention) the Supreme Court of Canada rejected the argument that separation from a primary caregiver in and of itself and without regard to the individualized circumstances, amounts to a “serious harm”.

The Court also indicated that judges should consider whether undertakings made by the left-behind parent to the primary caregiver could be joined to the return order to lift the

¹⁶ For this part of the Questionnaire, the [Practical Handbook on the Operation of the 1996 Child Protection Convention](#) can provide helpful guidance, available on the HCCH website at [under “Child Protection Section”](#).

¹⁷ See C&R No 40 of the 2017 SC: “The Special Commission notes that many Central Authorities may provide certain degrees of assistance (both when the 1980 Convention and / or the 1996 Convention apply), both to individuals within their own State and to foreign Central Authorities on behalf of an individual residing abroad. Requests for assistance may encompass such matters as: securing rights of access; the return of children (both when the 1980 Convention and / or the 1996 Convention apply); the protection of runaway children; reporting on the situation of a child residing abroad; post-return reports for children returned to their habitual residence; the recognition or non-recognition of a measure taken abroad (advanced recognition); and, the enforceability of a foreign measure of protection.” (Emphasis added.)

obstacles to the parent's return or to address any other aspect of the anticipated risk of harm to the child (e.g. an undertaking to facilitate daily contact between the taking parent and the child or to attend to financial or administrative obstacles to the primary caregiver's return). The Court noted that such undertaking would only attenuate the risk of harm if there were satisfactory evidence that they would be respected and enforceable in the other jurisdiction (F. v. N., 2022 SCC 51, at para. 77-81: <https://canlii.ca/t/jt977>).

Finally, the Court reiterated the principle that "a parent ought not to be able to create serious harm and then rely on it through their own refusal to return" (F. v. N., 2022 SCC 51, at para. 82).

44. Would the authorities of your State consider putting in place measures to protect the primary carer upon return in the requesting State if they were requested as a means to secure the safe return of the child?

Please explain and provide case examples where possible:

As a requested state, the Canadian Courts would not be in a position to impose measures in the other country. However, they may use undertakings, such as: the left behind parent must allow the taking parent and child to have sole occupancy of the house, the left behind parent is only entitled to certain specified access on certain conditions until access has been decided by the requesting state's court.

45. In cases where the return order was issued together with a protective measure to be implemented upon return, are you aware of any issues encountered by your State in relation to the enforcement of such protective measures?

No

Yes

Please explain and distinguish between such measures being recognised and enforced under the 1996 Convention:

We are not aware of such issues.

46. In cases where the return order was issued together with an undertaking given by either party to the competent authority of the requested State, are you aware of any issues encountered by your State in relation to the enforcement of such undertakings?

No

Yes

Please specify:

We are not aware of such issues.

47. If your State is a Contracting Party to the 1996 Convention, is Article 23 of that Convention being used or considered for the recognition and enforcement of undertakings given by either party while returning a child under the 1980 Convention?

No

Yes

Please specify:

[Please insert text here](#)

N/A

48. In cases where measures are ordered in your State to ensure the safety of a child upon return, does your State (through the Central Authority, competent Court or otherwise) attempt to monitor the effectiveness of those measures upon the child's return?

No

Yes

Please specify:
See above response to question no 23.

Some Canadian CAs follow-up with Canadian law enforcement, the requesting CA or the parties, but only to verify that the child has returned.

International family relocation¹⁸

49. Has your State adopted specific procedures for international family relocation?

Yes

Please describe such procedures, if possible:

At the federal level, rules governing the relocation of children (whether international or not) are provided in the Divorce Act (Please see the response to question 1 regarding Divorce Act provisions concerning relocation).

Many provinces and territories also have rules governing relocation, e.g.:

- British Columbia: the process to relocate a child is set out in the British Columbia Family Law Act (Part 4 Division 6)

(https://www.bclaws.gov.bc.ca/civix/document/id/complete/statreg/11025_04#division_d2e5455)

- Saskatchewan: the process to relocate a child is set out in the Children's Law Act 2020, SS 2020, c 2 (s. 13-17) (<https://canlii.ca/t/b5ln>)

No

Please describe how the authorities deal with international family relocation cases, if possible:

Please insert text here

Publicity and debate concerning the 1980 Convention

50. Considering any potential impact on its practical operation, has your State had any recent publicity (positive or negative) or has there been any debate or discussion in your national parliament or its equivalent about the 1980 Convention?

No

Yes

Please indicate the outcome of this debate or discussion, if any:

An electronic petition, initiated by Canadian left-behind parents, on the issue of international parental child abduction was recently tabled in the House of Commons (<https://petitions.ourcommons.ca/en/Petition/Details?Petition=e-4151>). Return Our Children Home, an advocacy group for Canadian left-behind parents, held its first annual conference in Ottawa in April 2022, during which time it held a vigil on Parliament Hill (<https://ottawacitizen.com/news/local-news/left-behind-parents-protesters-ask-government-to-help-bring-their-children-home>) to raise awareness of international parental child abductions and the impact they have of Canadian families and left-behind parents. A similar event is anticipated for late April 2023. □

51. By what methods does your State disseminate information to the public and raise awareness about the 1980 Convention?

¹⁸ See the C&R of the 2006 SC at paras 1.7.4-1.7.5, C&R No 84 of the 2012 SC, and C&R No 21 of the 2017 SC, the latter of which says: "The Special Commission recalls the importance of securing effective access to procedures to the parties in international family relocation cases. In this regard, the Special Commission notes that: i) mediation services may assist the parties to solve these cases or prepare for outcomes; ii) the Washington Declaration of 25 March 2010 on Cross-border Family Relocation may be of interest to competent authorities, in particular in the absence of domestic rules on this matter. The Special Commission recommends joining the 1996 Convention."

Please explain:

There are numerous methods undertaken by Canadian CAs to disseminate information to the public, NGOs and legal practitioners about the 1980 Convention. Some examples of modes of dissemination include participation in training sessions and seminars, pamphlets, media, and websites. The federal Government has issued a guidebook for left-behind parents (<https://travel.gc.ca/travelling/publications/international-child-abductions>) and some provincial and territorial governments have informational webpages.

PART II – TRAINING, EDUCATION AND POST-CONVENTION SERVICES

Training and education

52. Please provide below details of any training sessions / conferences organised in your State to support the effective functioning of the 1980 Convention, and the influence that such sessions / conferences have had:

Please provide details:

There have been numerous training sessions within Canada since the 2017 Special Commission. Here are a few examples: training sessions for law enforcement in Manitoba; former representatives of the BC CA prepared presentations to family law lawyers about the Convention; training programs offered to consular and political officers, both in Canada and abroad; various training sessions for the members of the private Bars, judiciary, and other agencies and authorities that cooperate domestically in the overall delivery of Canada's international legal obligations under the 1980 Convention.

The tools, services and support provided by the PB

53. Please comment or state your reflections on the specific tools, services and support provided by the PB to assist with the practical operation of the 1980 (and 1996) Conventions, including:

- a. The Country Profile available under the Child Abduction Section, including the addition and / or revision of its questions.

The Country Profiles, when completed and current, are valuable resources for CAs, and stakeholders. The Country Profiles facilitate easy and efficient access to information about processes and resources of the other Contracting Party involved in an international child abduction, potentially facilitating more expeditious processing of cases. Unfortunately, not all Contracting Parties have provided Country Profiles. It would be especially helpful if new Contracting Parties would complete a Country Profile as soon as possible following their accession to or ratification of the 1980 Convention. It would also be helpful if they were available in French or English.

- b. INCADAT (the international child abduction database, available at www.incadat.com). Incadat is a helpful tool. However, it is not comprehensive. Generally, Canadian courts refer to reported decisions rendered in Canada before turning to foreign cases reported in Incadat.

- c. *The Judges' Newsletter* on International Child Protection - the HCCH publication which is available online for free;²⁰

It was useful and informative. We understand that the last issue is from 2019 and would welcome for its publication to resume.

- d. The specialised "Child Abduction Section" of the HCCH website (www.hcch.net); This is a practical and user-friendly feature of the HCCH's website. CAs and other stakeholders (e.g. lawyers) in Canada use it regularly.

- e. Providing technical assistance and training to Contracting Parties regarding the practical operation of the 1980 (and 1996) Conventions. Such technical assistance and training may involve persons visiting the PB or, alternatively, may involve the PB (including through its Regional Offices) organising, or providing assistance with organising, national and

²⁰ Available on the HCCH website at under "Child Abduction Section" and "Judges' Newsletter on International Child Protection". For some volumes of *The Judges' Newsletter*, it is possible to download individual articles as required.

international judicial and other seminars and conferences concerning the Convention(s) and participating in such conferences;

Canada generally supports the provision of assistance and training on the 1980 and 1996 Conventions within existing resources and in light of the organisation's work programme and priorities as determined by the Council on General Affairs and Policy. While the methods/mechanisms proposed in the question may present benefits, they require considerable human and financial resources (i.e. to travel and attend such activities). We would therefore encourage the Permanent Bureau to explore developing more cost-effective ways of providing assistance and training, for example through webinars and virtual meetings.

- f. Encouraging wider ratification of, or accession to, the 1980 (and 1996) Conventions, including educating those unfamiliar with the Convention(s);²¹

We think it is critical to impress upon any State considering becoming a party the need to properly and fully implement the instrument(s), including by adopting:

- procedural rules that will facilitate the expeditious treatment of 1980 Convention applications;
- effective mechanisms to enforce return orders made under the 1980 Convention.

- g. Supporting communications between Central Authorities, including maintaining updated contact details on the HCCH website or intervening to facilitate contact in cases where obstacles arise.

This should remain one of the main functions of the Permanent Bureau. However, to be able to do so, Parties must regularly update the contact information for their CAs. We think the Permanent Bureau should send regular reminders to States.

- h. Supporting communications among Hague Network Judges and between Hague Network Judges and Central Authorities, including maintaining a confidential database of up-to-date contact details of Hague Network Judges or intervening to facilitate contact in cases where obstacles arise.

The Permanent Bureau should support communications among the IHNJ judges by maintaining their contact information in a confidential database and inviting for regular updates of such information.

However, we do not see a role for the Permanent Bureau in actual communications as it is within the exclusive discretion of individual judges to determine if and when to communicate with one another. We also feel that IHNJ judges could rely on one another to provide information or guidance on their roles as contact judges and on the use of direct judicial communications. In Canada's view, this was the main purpose of establishing the IHNJ.

We also do not see a role for the Permanent Bureau in supporting communications between IHNJ judges and CAs. As per 1.6.4 of the Conclusions and Recommendations of the 2006 Special Commission, adopted again in the Conclusions and Recommendations of the 2011 Special Commission (see number 67): "The Special Commission recognises that, having regard to the principle of the separation of powers, the relationship between judges and CAs can take different forms." We would support IHNJ judges and CAs sharing their experience and best practices regarding such communications, for example in the context of the Special Commission meeting.

These views do not preclude the Permanent Bureau from supporting communications among IHNJ judges and among IHNJ judges and CAs by inviting them to participate in

²¹ Which again may involve State delegates and others visiting the PB or, alternatively, may involve the PB organising, or providing assistance with organising, national and international judicial and other seminars and conferences concerning the 1980 (and 1996) Conventions and participating in such conferences.

activities such as seminars and conferences that provide important opportunities to share experiences more broadly.

- i. Responding to specific questions raised by Central Authorities, Hague Network Judges or other operators regarding the practical operation or interpretation of the 1980 (and 1996) Conventions.

The Permanent Bureau should answer questions regarding the operation or interpretation of the Conventions by referring to existing tools of the HCCH (e.g. Explanatory Reports, Guides to Good Practice, Conclusions and Recommendations), legislation or protocols in place in specific States (if the Permanent Bureau is aware of them) or by inviting CAs, IHNJ judges or other operators to consult with other CAs, IHNJ judges or other operators.

Guides to Good Practice under the 1980 Convention

54. For any of the Guides to Good Practice²² which you may have used to assist in implementing for the first time, or improving the practical operation of, the 1980 Convention in your State please provide comments below:

- a. Part I on Central Authority Practice.

Guides to Good Practice are considered very helpful. They are used by CAs for direction when new situations arise. They are referred to in communications with other States when issues regarding the operation of the Convention are raised. They are also useful when preparing speaking material on the Convention.

- b. Part II on Implementing Measures.

See response under (a)

- c. Part III on Preventive Measures.

See response under (a)

- d. Part IV on Enforcement.

See response under (a)

- e. Part V on Mediation

See response under (a)

- f. Part VI on Article 13(1)(b)

See response under (a)

- g. Transfrontier Contact Concerning Children – General Principles and Guide to Good Practice

See response under (a)

55. How has your Central Authority ensured that the relevant authorities in your State have been made aware of, and have had access to the Guides to Good Practice?

All Canadian CAs and Canadian IHNJ judges are aware of the resources on the HCCH website.

The website of the Ministère de la Justice du Québec provides links to all the Guides to Good Practice.

²² All Parts of the Guide to Good Practice under the 1980 Convention are available on the HCCH website at www.hcch.net under “Child Abduction Section” then “Guides to Good Practice”.

56. Do you have any other comments about any Part of the Guide to Good Practice?

Please insert text here

57. In what ways have you used the *Practitioner's Tool: Cross-Border Recognition and Enforcement of Agreements Reached in the Course of Family Matters Involving Children*²³ to assist in improving the practical operation of the 1980 Convention in your State?

The Practitioners' Tool has been shared with all the Canadian CAs and the Canadian IHNJ judges. It does not seem to have had an impact on the practical operation of the Convention in Canada.

Other

58. What other measures or mechanisms would you recommend:

a. to improve the monitoring of the operation of the 1980 Convention;

The Special Commission should remain the principal multilateral mechanism to review and to improve the operation of the Convention. Between Special Commission meetings, Contracting Parties should be encouraged to engage in bilateral or multilateral discussions amongst States concerned whenever issues regarding the operations of the 1980 Convention arise.

b. to assist States in meeting their Convention obligations; and

States party to the 1980 Convention are responsible for ensuring the proper interpretation and application of the 1980 Convention via their administrative and judicial organs. To assist them, consideration should be given to twinning CAs within a region for mentoring purposes. States might also be encouraged to strategically identify small-scale networking opportunity to discuss issues, share information about their legal systems (going beyond the Country Profile Form) and problem-solve to improve how their mutual Hague cases are managed. The Regional Offices could facilitate such opportunities.

c. to evaluate whether serious violations of Convention obligations have occurred?

The authorities of the States involved are the best placed to evaluate whether serious violations of the Convention have occurred. If a State is not meeting its obligations, it is up to the other Contracting party to raise the issue through its CA and/or diplomatic channels. If the problem is systemic, it is likely that a number of States will have encountered similar difficulties. States having a common interest could then work together and with the non-compliant State in resolving the problem.

²³ The *Practitioner's Tool* is available at the HCCH website at www.hcch.net under "Child Abduction Section" then "Guides to Good Practice".

PART III – NON-CONVENTION STATES

59. Are there any States that you would particularly like to see become a Contracting Party to the 1980 Convention? If so, what steps would you suggest could be taken to promote the Convention and encourage ratification of, or accession to, the Convention in those States?

Please explain:

Canada encourages all States that are not party to the 1980 Convention to consider putting into place the basic requirements of the Convention (i.e. setting-up a functioning CA, adopting procedural rules to facilitate the expeditious treatment of applications and the enforcement of return orders and, where necessary in their State, adopting legislation giving effect to the Convention) and becoming party to it. Canada is not in a position to consider acceptance of a State's accession before full legal and operational effect has been given to the Convention in that State. Acceding States should be encouraged to complete the Standard Questionnaire for newly acceding States and the Country Profile. In particular, Canada would encourage Egypt, Lebanon, Saudi Arabia, India, China and the United Arab Emirates to consider becoming party to the Convention.

60. Are there any States which are not Party to the 1980 Convention or not Members of the HCCH that you would like to see invited to the SC meeting in 2023?

Please indicate:

Same list as for 59.

The "Malta Process"²⁴

61. Do you have any suggestions of activities and projects that could be discussed in the context of the "Malta Process" and, in particular, in the event of a possible Fifth Malta Conference?

Please explain:

No suggestion at this time.

²⁴ The "Malta Process" is a dialogue between certain Contracting Parties to the 1980 and 1996 Conventions and certain States which are not Parties to either Convention, with a view to securing better protection for cross-border rights of contact of parents and their children and addressing the problems posed by international abduction between the States concerned. For further information see the HCCH website at www.hcch.net under "Child Abduction Section" then "Judicial Seminars on the International Protection of Children".

PART IV – PRIORITIES AND RECOMMENDATIONS FOR THE 2023 SC AND ANY OTHER MATTERS

Views on priorities and recommendations for the SC

62. Are there any particular issues that your State would like the SC meeting to discuss in relation to the 1980 Convention?

Please specify and list in order of priority if possible:

- Means to ensure that Hague return proceedings remain focused the narrow issue of the return of the child and not expand into custody issues involving a whole best interests of the child analysis;
- Means to facilitate the actual return of children and the enforcement of return orders, including undue delays associated with this;
- The practice of some requested States that require the presence of the left-behind parents during legal proceedings;
- Art. 21.

63. Are there any proposals your State would like to make concerning any particular recommendation to be made by the SC?

Please specify:

Please insert text here

Bilateral meetings

64. Should your State be interested in having bilateral meetings during the SC meeting, please indicate, for the PB's planning purposes, an estimate of how many States with which it intends to meet:

Please insert number:

Probably between 5 and 10 meetings.

Any other matters

65. States are invited to comment on any other matters which they may wish to raise at the 2023 SC meeting concerning the practical operation of the 1980 Convention.

Please provide comments:

Please insert text here